

DEPARTMENT OF STATE REVENUE

28930927.LOF

LETTER OF FINDINGS NUMBER: 28930927.LOF  
CONTROLLED SUBSTANCE EXCISE TAX  
FOR THE TAX PERIOD OF NOVEMBER 9, 1993

**NOTICE:** Under IC 422-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. Controlled Substance Excise Tax - Liability**

**Authority:** Indiana Code § 6-7-3-5. *Bryant v. Indiana Department of State Revenue*, 660 N.E.2d 290 (Ind.1995). *Hayse v. Indiana Department of State Revenue*, 660 N.E.2d 325 (Ind.1995). *Baily v. Indiana Department of State Revenue*, 660 N.E.2d 322 (Ind.1995). *Cliffit v. Indiana Department of State Revenue*, 660 N.E.2d 310 (Ind.1995). *Hall v. Indiana Department of State Revenue*, 660 N.E.2d 319 (Ind.1995).  
The taxpayers protests assessment of controlled substance excise tax.

**STATEMENT OF FACTS**

On November 6, 1993, while under the surveillance of the Indiana State Police, a truck pulling a trailer drove to taxpayer's home. The trailer contained approximately seventy-five (75) pounds of suspected marijuana. The Indiana State Police arrested the taxpayer and his wife, for conspiracy to commit dealing marijuana over ten (10) pounds. The suspected marijuana was tested and weighed and was in fact marijuana weighing 30,886.9 grams. The Department issued a jeopardy assessment against the taxpayer on November 10, 1993. Taxpayer subsequently plead guilty to possession of marijuana, less than 30 grams, with the other charges dismissed. The taxpayer timely filed his protest.

**I. Controlled Substance Excise Tax Liability**

**DISCUSSION**

In Indiana, the manufacture, possession or delivery of marijuana is taxable.<sup>1</sup> There was no controlled substances excise tax ("CSET") paid on taxpayer's marijuana, so the Department assessed the tax against him and demanded payment. Indiana law specifically provides that notice of a proposed assessment is *prima facie* evidence that the Department's claim for the unpaid tax is valid<sup>2</sup>. The taxpayer timely protested the tax assessment and now bares the burden of proving that the proposed assessment is wrong.

In support of his protest, the taxpayer stated in hearing that he had no knowledge of the marijuana contained in the trailer, and that he was merely assisting a lost motorist. Taxpayer further asserted that his lack of knowledge was the basis for the State dismissing the remaining charges. Despite the Department's request, taxpayers failed to provide any evidence to support these assertions. Therefore, taxpayer fails his burden of showing, by preponderance of evidence, the CSET assessment is wrong.

**FINDING**

The Department respectfully denies the taxpayer's protest.

---

<sup>1</sup> Ind. Code § 6-7-3-5

<sup>2</sup> Ind. Code § 6-8.1-5-1